

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

In re: PHARMACEUTICAL INDUSTRY  
AVERAGE WHOLESALE PRICE LITIGATION

MDL No. 1456

Civil Action: 01-CV-12257-PBS

THIS DOCUMENT RELATES TO:

Judge Patti B. Saris

*State of Nevada v. Abbott Labs., Inc. et al.*,  
CA No. 02-CV-00260-ECR (Nevada I), and

*State of Nevada v. American Home Products, et al.*,  
CA No. 02-CV-12086-PBS (Nevada II)

**DECLARATION OF THOMAS DALY IN SUPPORT OF DEFENDANTS'  
MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION FOR  
RECONSIDERATION OF NEVADA'S MOTION FOR A PROTECTIVE ORDER  
RELATING TO DEFENDANTS' DEPOSITION SUBPOENA TO MGM MIRAGE**

I, THOMAS DALY, declare as follows:

1. I am a paralegal with the law firm of Kaye Scholer LLP, which represents Novartis Pharmaceuticals Corporation in the above-captioned cases. I make this declaration in support of Defendants' Memorandum Of Law In Support Of Their Motion For Reconsideration Of Nevada's Motion For A Protective Order Relating To Defendants' Deposition Subpoena To MGM Mirage.

2. This declaration sets forth certain facts in support of Defendants' motion for reconsideration.

3. On August 10, 2006, I served the following documents on all parties of record in the above case, via LexisNexis File & Serve: (i) Memorandum of Law in Opposition to Nevada's Motion For A Protective Order Relating To Defendants' Deposition Subpoena To MGM Mirage and (ii) Declaration of Samuel Lonergan In Opposition To Nevada's Motion For A Protective Order Relating To Defendants'

Deposition Subpoena To MGM Mirage. Annexed hereto as Exhibits 1 and 2, respectively, are true and accurate copies of these documents; each document bears the LexisNexis file-stamp indicating that it was served on August 10, 2006.

4. Our usual practice in this case has been to make filings through our co-counsel, Wilmer Cutler Pickering Hale and Dorr LLP, but because Exhibits 1 and 2 were being filed after hours, I filed them myself. I did not realize that filing the papers on LexisNexis was insufficient, and that they also had to be filed with the United States District Court For the District of Massachusetts' Electronic Case Filing System. As a result, the papers were not placed in the Court record.

5. In a September 14, 2006 Order, Judge Marianne B. Bowler, stating, "there being no opposition," granted the State of Nevada's ("Plaintiff") Motion For a Protective Order Relating To Defendants' Deposition Subpoena To MGM Mirage (*i.e.*, Motion No. 2966). Annexed hereto as Exhibit 3 is a true and accurate copy of the September 14, 2006 Docket Report for Case 1:01-CV-12257-PBS on the Electronic Case Filing System.

I swear under the penalty of perjury under the laws of the State of New York and the United States of America that the foregoing is true and correct.

Dated: New York, New York  
September 19, 2006

By: /s/ Thomas Daly  
Thomas Daly

**CERTIFICATE OF SERVICE**

I hereby certify that on September 19, 2006, I caused a true and correct copy of the foregoing, Declaration of Thomas Daly in support of Defendants' Memorandum Of Law In Support Of Their Motion For Reconsideration Of Nevada's Motion For A Protective Order Relating To Defendants' Deposition Subpoena To MGM Mirage, to be served on all counsel of record by electronic service pursuant to Case Management Order No. 2 in MDL No. 1456.

/s/ Samuel Lonergan

Samuel Lonergan  
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